IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD WESLEY, Plaintiff,	:	CIVIL ACTION
v.	:	
JASON DOMBROWSKI, et al., Defendants.	:	No. 03-4137

MEMORANDUM AND ORDER

J. M. KELLY, J. **JUNE , 2004**

Presently before the Court is a Motion to Dismiss filed by Commonwealth Defendants Hearing Examiner Mary Canino, Nurse Peggy Beauchesne, Lieutenant Kevin Marsh, and Correctional Officers Dombrowski, Adolfson, Lewis, Cox and Taylor (collectively, the "Commonwealth Defendants") seeking dismissal of the Complaint filed by pro se Plaintiff Ronald Wesley ("Plaintiff" or "Wesley"), an inmate incarcerated at the State Correctional Institution at Graterford ("Graterford"), pursuant to Federal Rule of Civil Procedure 12(b)(6). Also before the Court is a separate Motion to Dismiss filed by Defendant Dennis Iaccarino, M.D. ("Iaccarino"). Plaintiff initiated suit under 42 U.S.C. § 1983, requesting injunctive and declaratory relief, as well as compensatory and punitive damages, for alleged violations of his Eighth Amendment and Fourteenth Amendment Due Process rights, and for state law claims of intentional assault, battery and medical malpractice.

For the following reasons, the Commonwealth Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**, and

Defendant Iaccarino's Motion to Dismiss is **GRANTED** in its entirety.

I. BACKGROUND

For the purpose of ruling on this Motion to Dismiss, we recite the facts as alleged by Plaintiff and accept his allegations as true.

On August 6, 2001, Corrections Officers ("CO") Dombrowski and Adolfson escorted Wesley from his cell on the Restricted Housing Unit ("RHU") to the infirmary for an appointment at the asthma clinic. Wesley's hands were cuffed behind his back. (Compl., ¶ 1.) Adolfson accompanied Wesley during his scheduled examination. Dombrowski remained outside of the clinic room. (Id., ¶ 2.)

After the asthma examination, Wesley took a seat outside the clinic room. Adolfson remained with Wesley, waiting for Dombrowski to reappear before escorting Wesley back to his cell. (Id., ¶ 3.) While seated, Wesley observed "hep-C" Nurse Beauchesne walk by and requested to speak with her. Wesley asked Beauchesne to see the "hep-C" doctor about his complaint of internal organ pain, pressure and swelling in or around his liver and or stomach area, from what he believed to be excess fluids thereabout. Wesley believed that they were side-effects of his recently completed interferon treatment for his Hepatitis-C

condition. (Id., ¶ 4.) Wesley also asked Beauchesne to tell the doctor that he was scheduled for a hepatitis clinic appointment on August 3, 2001, marking the six-month completion of his hepatitis treatment, that Wesley claims he did not attend because, for some reason, the guards had failed to take him to that appointment. (Id., ¶ 5.) After listening to Wesley's complaint, Beauchesne replied that she would tell the doctor, and proceeded into the doctor's office. (Id., ¶ 6.)

Before Beauchesne reappeared from the doctor's office, Dombrowski returned, and said, "O.K., let's go." (Id., ¶ 7.) Wesley objected by saying that Beauchesne was relaying a medical complaint to the doctor for him, and that Wesley was awaiting a response from her. (Id., ¶ 8.) Dombrowski replied that Wesley was already seen by a doctor and that they were ready to go. (Id., ¶ 9.) At that point, Wesley began "hollering out" towards the doctor's office that he was sick and needed to be examined to determine what was "causing the pain, pressure & swelling in or around [his] liver or stomach area, making loud squishing noises like churning fluids." (Id., ¶ 10.) Beauchesne then emerged from the doctor's office and told Wesley that the doctor rescheduled his hepatitis appointment for August 28, 2001, and that the doctor had no reason to examine Wesley before that time. (Id., ¶ 11.)

Dombrowski then ordered Wesley to stand on his feet to leave

the infirmary. (Id., ¶ 12.) Feeling "exhausted, weak & in pain," Wesley was "physically unable to muster the strength to rise from the chair & stand on [his] feet despite [his] efforts" to do so. (Id., ¶ 13.) Dombrowski interpreted Wesley's inability to muster strength as willfully disobeying his order, and ordered Wesley to do so several more times. Seeing that Wesley was not standing to his feet, Dombrowski then grabbed hold of Wesley under his right armpit, "snatch[ed]" Wesley out of his chair and ordered him to leave the infirmary. (Id., ¶ 14.) Dombrowski maintained his hold while Wesley tried to muster the strength to begin walking, but his legs went "limp" and Wesley demanded a wheelchair to return to his cell. Dombrowski called Wesley a liar since Wesley was able to walk to the infirmary, and said that if Wesley did not walk back to his cell, Dombrowski would drag him back to his cell. (Id., ¶ 15.)

Wesley called out loudly to the "hep-C" doctor that his legs would not move and that he needed a wheelchair, but neither the "hep-C" doctor nor the "hep-C" nurse acted in response. Wesley believed that, as a result of the doctor and the nurse's inaction, Dombrowski was also encouraged not to aid Wesley. (Id., ¶¶ 17-18.)

Dombrowski then instructed Adolfson to grab Wesley's other arm to drag him back to his cell. (Id., ¶ 18.) In response, Adolfson grabbed Wesley by his left armpit. Wesley, being held

face-down by his armpits as his hands were cuffed at the wrists behind his back, was "dragged" in a non-stop motion through the infirmary's corridors, a distance of about 100 feet. (Id., ¶ 19.)

Once in the main administration corridor, Wesley began screaming and crying loudly, asking for someone to help him and to get him in a wheelchair because he could not walk. At least a half dozen guards came running to the scene. (Id., ¶ 20.) Again, Wesley began pleading for a wheelchair back to the cell. Dombrowski told guards that Wesley was faking and that he could walk back to his cell because he was able to walk from his cell to the infirmary. Dombrowski instructed someone to grab Wesley's legs to get him out of the hallway. (Id., ¶ 21.)

Several guards then moved to grab Wesley's legs. Wesley felt someone step on his right ankle, then felt himself lifted by his armpits and by both legs, which were bent backwards at the knee. Wesley was carried partially down the main administration corridor, then out to a back trash dock area, a distance of about 200 feet, where he was dropped about a foot to the ground on his stomach. Wesley gestured as if to vomit, then lifted his head to the right and spit accidentally onto Dombrowski's pant leg at the cuff. (Id., ¶ 22.) Dombrowski did not accept Wesley's apology for the accident and threatened to "hog-tie carry" Wesley to the block rather than drive him back in he van. (Id., ¶ 23.)

Wesley was again lifted and carried in the same manner off the dock down a connecting ramp for another 100 feet where they met up with an oncoming van. (Id., ¶ 24.) Wesley was lifted into the van, and placed face-down on a long seat. He felt a guard place his knee into the small of Wesley's back and grab the back of his neck with his hand as he pushed his face into the seat cushion. (Id., ¶ 25.) When the van arrived at the unit, Wesley felt himself being lifted out of the van, and then burst out crying and pleading with the guards not to carry him like that anymore, and asked for help to walk. (Id., ¶ 26.) In response, two of the officers steadied Wesley on his feet, and helped him to his cell, where they uncuffed him and placed him on his bed, as instructed by Sergeant Flaim. Flaim stayed with Wesley in his cell for the next five minutes inquiring whether Wesley would be all right and whether he needed to go to the hospital. (Id., ¶ 27.) Wesley was "too terrified & afraid from terror & fear for [his] life" to go to the hospital after his experience with the officers, and declined Flaim's offer. (Id., ¶ 28.) After Flaim left his cell, Wesley began to cry and fell asleep. (Id., ¶ 29.) Several hours later, Wesley awoke and felt "excruciating body pain & stiffness." (Id., ¶ 30.) The small of his back was bruised and sore, as were his neck, waist and shoulders; his ankle was sprained and swollen; his armpits were bruised and swollen; black and blue handprint marks were on his

skin; and he felt pain and soreness on his stomach. (Id., ¶ 31.)

Several hours after the incident, Wesley was served with a misconduct report, in which Dombrowski charged Wesley with refusal to obey his order to stand on his feet, and assault for spitting on his pant leg. (Id., ¶ 32.) On August 8, 2001, a disciplinary hearing was held on the misconduct report filed by Dombrowski, without Wesley's knowledge. (Id., ¶ 33.) Over the next two to three months, Wesley continued to request the status of the misconduct report. On December 19, 2001, the hearing examiner served Wesley with a copy of the disciplinary hearing report findings, which indicated that Wesley was found guilty of the charges and that he had voluntarily refused to attend the hearing, as well as a copy of a waiver of disciplinary procedures, which indicated Wesley's refusal to sign the waiver despite his alleged voluntary waiver of a disciplinary hearing. (Id., ¶¶ 34-35.) Wesley avers that he did not sign the waiver. (Id., ¶ 36.)

On August 14, 2001, Wesley submitted a grievance related to the August 6, 2001 incident, which the grievance coordinator sent to medical department officials for a response as to the issue of whether Wesley was capable of walking at the time. (Id., ¶ 37.) The medical officials were unable to provide an initial review response. (Id., ¶ 38.) On September 6, 2001, Dombrowski and Adolfson's unit security supervisor, Lt. Marsh, responded to the

grievance coordinator that Wesley was to blame for the subordinate officers' use of force on August 6, 2001. (Id., ¶ 39.)

Wesley also alleges that the use of force and other assault actions against inmates is part of an underlying prison culture of conspiracy cover-up, and that RHU supervisors and internal security supervisors enabled Dombrowski and other RHU-assigned officers to engage in assaultive and aggressive misconduct by failing to train, supervise or discipline. (Id., ¶¶ 43-44.)

II. STANDARD OF REVIEW

The purpose of a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) is to test the legal sufficiency of a complaint. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). We therefore accept all factual allegations in the complaint as true and give the pleader the benefit of all reasonable inferences that can be fairly drawn therefrom. Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). We are not, however, required to accept legal conclusions either alleged or inferred from the pleaded facts. Kost, 1 F.3d at 183. A court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Courts must generously construe complaints drafted by pro se plaintiffs. Haines v. Kerner, 404

U.S. 519, 520-21 (1972); Urrutia v. Harrisburg County Police Dept., 91 F.3d 451, 456 (3d Cir. 1996).

III. DISCUSSION

A. Section 1983

To establish a § 1983 claim, a plaintiff must demonstrate that: (1) the challenged conduct was committed by a person acting under color of state law, and (2) the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. See Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994); Payton v. Horn, 49 F. Supp. 2d 791, 794 (E.D. Pa. 1999).

A plaintiff in a § 1983 action must allege and prove that individual defendants personally performed, directed, or knowingly permitted an illegal act. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Individuals cannot be liable for civil rights violations without either direct involvement in or knowledge of and acquiescence in the alleged constitutional violation. Id. A defendant's conduct must have a close causal connection to plaintiff's injury for liability to attach under § 1983. Martinez v. California, 444 U.S. 277, 285 (1980). Traditional concepts of respondeat superior do not apply to actions brought under § 1983. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 691 (1978).

B. Claims Against Lewis, Cox and Taylor

Respecting Lewis, Cox and Taylor, Wesley fails altogether to include their names in the body of the Complaint in connection with any allegation that they personally performed, directed, or knowingly permitted any illegal act. While their names appear in the caption of this case and in the identification of parties portion of the Complaint, their names appear nowhere else in the text of the Complaint. That fact alone is sufficient for dismissal. See Marvasi v. Shorty, 70 F.R.D. 14, 22-23 (E.D. Pa. 1976). Accordingly, we dismiss all claims against Lewis, Cox and Taylor.

C. Eighth Amendment Deliberate Indifference to Serious Medical Need

Plaintiff asserts an Eighth Amendment claim of deliberate indifference to a serious medical need against medical personnel Nurse Beauchesne and Dr. Iaccarino. Plaintiff claims that Beauchesne and Iaccarino were deliberately indifferent to his serious medical need by rescheduling his missed appointment rather than seeing him immediately upon demand. Plaintiff also implies that they were deliberately indifferent for failing to take his claim seriously that his legs had suddenly gone limp after his demand for immediate medical attention was denied, thereby signaling to COs Dombrowski and Adolfson that his sudden

physical weakness was feigned and that a wheelchair was unnecessary.

The Eighth Amendment prohibits any punishment which violates civilized standards of humanity and decency. Griffin v. Vaughn, 112 F.3d 703, 709 (3d Cir. 1997) (citing Young v. Quinlan, 960 F.2d 351, 359 (3d Cir. 1992)). To prove a violation of the Eighth Amendment, an inmate must show that he has been deprived of the minimal civilized measure of life's necessities. Id. This includes proving that the deprivation suffered was sufficiently serious, and that a prison official acted with deliberate indifference in subjecting him to that deprivation. Id.

To state a cognizable claim for medical mistreatment under the Eighth Amendment, "a prisoner must allege acts or omissions sufficiently harmful to evidence a deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). Deliberate indifference to serious medical needs may be manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care. Id. at 104-05. The "serious medical need" element is an objective factor that the Court determines is sufficiently serious if it is one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would note the need for medical attention.

Monmouth County Correctional Institution Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987), cert. denied, 486 U.S. 1006 (1988). The "deliberate indifference" element is a subjective factor, where it must be shown that each defendant disregarded a known or obvious consequence of his action. See Farmer v. Brennan, 511 U.S. 825, 842 (1994).

1. Claim Against Beauchesne

As against Nurse Beauchesne, Plaintiff's allegations of her deliberate indifference to perceived side-effects from his Hepatitis-C treatment are belied by Plaintiff's admission that Beauchesne listened to his concerns, immediately reported those concerns to the doctor and then returned to inform Wesley of the doctor's decision to reschedule his appointment. Plaintiff does not assert that it was Beauchesne's decision to reschedule his appointment, but that she simply relayed the message from the doctor to Wesley. Thus, Plaintiff fails to allege personal involvement by Beauchesne to state a § 1983 claim for an Eighth Amendment violation.

Further, Plaintiff's speculative assertion that Beauchesne's failure to provide Wesley a wheelchair on demand helped to encourage and support CO Dombrowski's opinion that Wesley's sudden physical weakness was feigned is tenuous at best, and, again, fails to allege Beauchesne's personal involvement in the

alleged deprivation of a constitutional right. Even viewing all of Plaintiff's allegations as true, he fails to state a claim of deliberate indifference to his serious medical needs by Beauchesne. Accordingly, the Commonwealth Defendants' Motion to Dismiss this Eighth Amendment claim against Beauchesne is **GRANTED**.

2. Claim Against Iaccarino

Plaintiff's Eighth Amendment claim against Iaccarino must also be dismissed for Plaintiff's failure to allege that Iaccarino had subjective knowledge that his conduct or failure to act presented a substantial risk of harm to Plaintiff. A prison official cannot be found liable under the Eighth Amendment unless the official is both "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer, 511 U.S. at 837.

Here, Plaintiff's sole allegation involving Iaccarino is that, at some point after Wesley's asthma appointment, while sitting in the waiting room awaiting return to his cell, he asked to be seen again by a doctor for a different purpose and was then told that he had been rescheduled for an appointment with the "hep-C" doctor. Even accepting all of Plaintiff's allegations as true, the facts do not support an inference that Iaccarino subjectively knew that denying Plaintiff the instantaneous

attention he sought that day, and instead agreeing to see him at a rescheduled appointment, would pose a substantial risk of harm to Plaintiff. Since Plaintiff fails to establish both required elements of an Eighth Amendment claim against Iaccarino, Iaccarino's Motion to Dismiss is **GRANTED**.[1]

D. Eight Amendment Excessive Force Claim

Plaintiff asserts an Eighth Amendment claim against Dombrowski and Adolfson for their use of excessive force in removing him from the infirmary. The Commonwealth Defendants argue, however, that the force used to remove Plaintiff fall within the de minimis category of physical confrontations.[2]

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[1] It also appears that Plaintiff has failed to exhaust his available administrative remedies with regard to his medical claims against Iaccarino, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). The only allegation Plaintiff makes pertaining to the filing of grievances is that he grieved the alleged use of excessive force against him by correctional officers as they removed him from the infirmary. (Compl. ¶¶ 37-41.) There is no allegation that Plaintiff grieved his complaint against Iaccarino that he should have agreed to see Wesley at the very moment demanded by Wesley.

[2] "Although no court approves of physical violence in the correctional system, courts have found certain physical confrontations to be merely de minimis and not violative of the constitution." Acosta v. McGrady, Civ. A. No. 96-2874, 1999 U.S. Dist. LEXIS 3191, at *27-28 (E.D. Pa. Mar. 22, 1999), citing Colon v. Wert, Civ. A. No. 96-4494, 1997 U.S. Dist. LEXIS 3413 (E.D. Pa. March 21, 1997) (finding de minimis allegation that guard slammed a cell door into prisoner's chest, thereby aggravating preexisting back and neck injuries); Barber v. Grow, 929 F. Supp. 820 (E.D. Pa. 1996) (holding that pulling chair out from under inmate, causing him to fall and suffer loose teeth, was not an Eight Amendment violation); Robinson v. Link, Civ. A.

The core inquiry in claims of excessive force is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson, 503 U.S. at 7. A court must consider several factors in making that determination, including: (1) the need for the application of force; (2) the relationship between the need and the amount of force that was used; (3) the extent of injury inflicted; (4) the extent of the threat to the safety of staff and inmates, as reasonably perceived by responsible officials on the basis of the facts known to them; and (5) any efforts made to temper the severity of a forceful response. See Whitley v. Albers, 475 U.S. 312, 321 (1986). While the Eighth Amendment's proscription against cruel and unusual punishment excludes from constitutional recognition de minimis uses of physical force if the use of force is not of a sort "repugnant to the conscience of mankind," to state a claim, the plaintiff need only allege that force was maliciously applied to cause harm. See id. at 327.

Here, Plaintiff alleges that when he was unable to walk back

No. 92-4877, 1994 U.S. Dist. LEXIS 11950 (E.D. Pa. Aug. 25, 1994) (finding de minimis allegations that prisoner was handcuffed, dragged along a corridor, and hit in the back); Brown v. Vaughn, Civ. A. No. 91-2911, 1992 U.S. Dist. LEXIS 4221 (E.D. Pa. March 31, 1992) (finding de minimis allegations that guard struck inmate in the chest and spit on him); cf. Hudson v. McMillian, 503 U.S. 1 (1992) (determining that beating given by two prison guards, resulting in minor bruises, swelling and loosened teeth, where a supervisor stood by and told guards "not to have too much fun," rose beyond de minimis physical violence and constituted a violation of the Eight Amendment).

to his cell, he was lifted by his armpits and dragged face-down 100 feet down a corridor, when other guards were beckoned to help lift him by his legs as well. Plaintiff then felt someone step on his right ankle before he was lifted off the ground by both his armpits and his legs, and carried face-down another 200 feet. Plaintiff was then dropped to the ground from approximately one foot above the ground onto his stomach onto a trash dock. He was then picked up and carried another 100 feet down a roadway to an awaiting van, where he was placed face-down onto a long seat cushion. A guard then pressed his knee into the small of Plaintiff's back, and pressed Wesley's face into the cushion. Plaintiff claims that the guards used "unjustified, excessive" force and acted with "malicious & sadistic intent, while [Plaintiff was] under handcuffed-from-behind restraint, unresisting."

Without making any judgments as to what actually occurred, we cannot at this early stage of the proceedings conclude that Plaintiff fails to state an excessive force claim against Dombrowski and Adolfson. While Plaintiff's Complaint is hardly a model of clarity, accepting his allegations as true, he states with sufficient specificity the actions of the guards, and connects those actions with averments as to the guards' malicious and sadistic intent, to state an excessive force claim. Accordingly, the Commonwealth Defendants' Motion to Dismiss

Plaintiff's Eighth Amendment claim against Dombrowski and Adolfson for use of excessive force is **DENIED**.

E. Fourteenth Amendment Procedural Due Process Claim

Plaintiff alleges that CO Dombrowski's misconduct charge and the subsequent misconduct hearing conducted by Hearing Examiner Canino amounted to a violation of his procedural due process rights under the Fourteenth Amendment. Plaintiff also alleges that Lt. Marsh's disposition of his grievance relating to the August 6, 2001 events violated his due process rights. The Commonwealth Defendants argue that Plaintiff fails to state a procedural due process claim because he fails to allege that he has been deprived of a liberty interest.

As an initial matter, the filing of a false or unfounded misconduct charge against an inmate does not constitute a deprivation of a constitutional right. See Freeman v. Rideout, 808 F.2d 949 (2d Cir. 1986), cert. denied, 485 U.S. 982 (1988); Flanagan v. Shively, 783 F. Supp. 922, 931-32 (M.D. Pa.), aff'd, 980 F.2d 722 (3d Cir. 1992), cert. denied, 510 U.S. 829 (1993). There is also no constitutional right to require prison officials to investigate an inmate's grievances. Davage v. United States, No. Civ. A. 97-1002, 1997 U.S. Dist. LEXIS 4844, at * 9 (E.D. Pa. Apr. 11, 1997); see also Robinson v. Love, 155 F.R.D. 535, 536 n.3 (E.D. Pa. 1994) (citing cases).

The Supreme Court explained that the due process clause is applicable only when an inmate has been deprived of a liberty or property interest. See Sandin v. Conner, 515 U.S. 472, 484 (1995). Due process protection for a state created liberty interest is thus limited to those situations where deprivation of that interest "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id.; see also Griffin v. Vaughn, 112 F.3d 703, 706 (3d Cir. 1997).

Here, Plaintiff claims that CO Dombrowski filed a false misconduct charge against him, that Hearing Examiner Canino conducted a hearing without notice to Plaintiff, and that Lt. Marsh failed to investigate his grievance. Even accepting Plaintiff's allegations as true, as we are required to do on a motion to dismiss, that Dombrowski filed a false or unfounded misconduct charge against Plaintiff and that Marsh failed to investigate Plaintiff's grievance, these allegations do not sufficiently plead a constitutional violation.

Similarly, Plaintiff's claim that the misconduct hearing, allegedly held without notice to him and the opportunity to be heard, violated his procedural due process rights fails. Plaintiff is already housed in the RHU, and fails to allege what penalty, if any, he received as a result of the alleged false misconduct charge filed by Dombrowski. Because Plaintiff fails

to articulate the liberty or property interest infringed upon by the correctional institution's action, and how such action imposed an "atypical or significant hardship on [him] in relation to the ordinary incidents of prison life," Plaintiff's procedural due process claim must fail. Accordingly, the Commonwealth Defendants' Motion to Dismiss Plaintiff's Fourteenth Amendment Due Process Claim against Dombrowski, Canino and Marsh is **GRANTED**.

F. Conspiracy Claim

Plaintiff appears to allege that Dombrowski, Adolfson and Marsh conspired to violate his civil rights, but fails to articulate a cognizable conspiracy claim under § 1983. In the Third Circuit, a conspiracy claim must be stated with specificity, and may not be based merely upon suspicion and speculation:

> it is a longstanding rule in the Third Circuit that a mere general allegation . . . [or] averment of conspiracy or collusion without alleging the facts which constituted such conspiracy or collusion is a conclusion of law and is insufficient [to state a claim].

Young v. Kann, 926 F.2d 1396, 1405 n.16 (3d Cir. 1991) (citing Kalmanovitz v. G. Heileman Brewing Co., Inc., 595 F. Supp. 1385, 1400 (D. Del. 1984), aff'd, 769 F.2d 152 (3d Cir. 1985)). To state a claim for conspiracy under § 1983, a plaintiff must allege "specific facts suggesting that there was a mutual

understanding among the conspirators to take actions directed toward an unconstitutional end." Duvall v. Sharp, 905 F.2d 1188, 1189 (8th Cir. 1990). There must be "allegations of a combination, agreement or understanding among all or between any of the defendants," and "factual allegations that the defendants plotted, planned, or conspired together to carry out the chain of events." Safeguard Mutual Insur. Co. v. Miller, 477 F. Supp. 299, (E.D. Pa. 1979) (quoting Ammlung v. City of Chester, 494 F.2d 811, 814 (3d Cir. 1974)).

Here, Plaintiff fails to allege any facts to show that there existed an agreement or understanding between or among Dombrowski, Adolfson, Marsh, and/or any other prison official, or that they otherwise planned together to carry out the chain of events leading to a violation of Plaintiff's constitutional rights. Rather, Plaintiff merely states a suspicion that there exists "an underlying prison culture of cover up, by any means necessary, guards excessive use of force/intentional assualt [sic] actions against inmates, including the inmate plaintiff." (Compl. ¶ 43.) Without more factual allegations stated with specificity, Plaintiff's conspiracy claim is legally deficient and must be dismissed.

G. State Tort Claims Against Dombrowski and Adolfson

In addition to his § 1983 claims, Plaintiff appears to

assert state law claims against Commonwealth Defendants Dombrowski and Adolfson for intentional assault and battery. Plaintiff's state law claims, to the extent that they are asserted against Dombrowski and Adolfson in their capacities as employees of the Commonwealth, are barred by the Commonwealth's sovereign immunity.

The Pennsylvania legislature has provided "that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly shall specifically waive the immunity." 1 Pa. Cons. Stat. § 2310. A Commonwealth party is defined as "[a] Commonwealth agency and any employee thereof, but only with respect to an act within the scope of his office or employment." 42 Pa. Cons. Stat. § 8501. Thus, Commonwealth officials and employees are immune from suit for those actions taken within the scope of their duties, except in those instances where the immunity has been specifically waived. See La Frankie v. Miklich, 618 A.2d 1145 (Pa. Commw. Ct. 1992); see also Yakowicz v. McDermott, 548 A.2d 1330 (Pa. Commw. Ct. 1988), alloc. denied, 565 A.2d 1168 (Pa. 1989) (holding that a Commonwealth employee, when acting within scope of his or her duties, is protected by sovereign immunity from imposition of liability for intentional tort claims).

The Commonwealth's sovereign immunity is waived in nine narrow categories of negligence cases. See 42 Pa. Cons. Stat. § 8522(b).[3] Plaintiff's state law claims, however, to the extent they are alleged against Dombrowski and Adolfson, while they were acting within the scope of their employment, do not fall within any of the enumerated statutory exceptions to sovereign immunity, and must fail as a matter of law.[4]

H. State Medical Malpractice Claim Against Iaccarino

Plaintiff attempts to assert a medical practice claim against Iaccarino. To establish a prima facie case of medical malpractice, a plaintiff must establish:

> (1) a duty owed by the physician to the patient, (2) a breach of duty from the physician to patient, (3) that the breach of duty was the proximate cause of, or a

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[3] The nine categories of cases for which sovereign immunity has been waived under Pennsylvania law are: (1) vehicle liability; (2) medical-professional liability; (3) care, custody or control of personal property; (4) Commonwealth real estate, highways and sidewalks; (5) potholes and other dangerous conditions; (6) care, custody or control of animals; (7) liquor store sales; (8) National Guard activities; and (9) toxoids and vaccines. 42 Pa. Cons. Stat. § 8522(b).

[4] In his Complaint, Plaintiff asserts that "[e]ach defendant was, at the time of the events alleged against them in this complaint, employed at Graterford prison in the alleged capacity," (Compl., ¶ 11), and that "[e]ach defendant is being sued in their individual capacity." (Id., ¶ 12.) Plaintiff, however, fails to allege with any factual specificity whether Dombrowski or Adolfson acted beyond the scope of their duties. Since the parties do not raise this issue, we do not discuss the viability of Plaintiff's individual capacity claims against Dombrowski and Adolfson.

> substantial factor in, bringing about the harm suffered by the patient, and (4) damages suffered by the patient that were a direct result of that harm.

Mitzelfelt v. Kamrin, 584 A.2d 888, 891 (Pa. 1990). Plaintiff, however, fails to articulate facts which, if true, would constitute a claim for medical malpractice under Pennsylvania law. Here, Plaintiff alleges that, while sitting in the waiting room awaiting return to his cell, he asked a nurse to ask a doctor to see him, immediately, about his feelings of internal swelling and bloating and "squishing noises," and that, instead of agreeing to see him immediately, was told that he was already scheduled at a later date to be seen for these complaints. Plaintiff has failed to allege that he has suffered any harm resulting from having been made to wait until the scheduled appointment to be seen about these complaints, and, therefore, has failed to allege any connection between the failure to see Iaccarino immediately and any consequent harm. Further, he has alleged no consequent harm from any delay in seeing the doctor. Indeed, the only injuries he alleges he has suffered are those physical injuries which he asserts were caused by correction officers grabbing, lifting, and dragging him in returning him to his cell. Such alleged injuries fail to constitute a medical condition as to which he alleges Iaccarino committed medical malpractice. Plaintiff further fails to allege that Iaccarino failed to treat these injuries. Accordingly, Wesley fails to

state a claim for medical malpractice against Iaccarino, and Iaccarino's Motion to Dismiss is **GRANTED** as to this claim.

IV. CONCLUSION

For the foregoing reasons, Commonwealth Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** to the extent that all claims are dismissed against all Commonwealth Defendants except for Plaintiff's Eighth Amendment excessive force claim against Commonwealth Defendants Dombrowski and Adolfson. Defendant Iaccarino's Motion to Dismiss is **GRANTED** in its entirety.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RONALD WESLEY, Plaintiff,	:	CIVIL ACTION
v.	:	
JASON DOMBROWSKI, et al., Defendants.	:	No. 03-4137

O R D E R

AND NOW, this day of June, 2004, in consideration of the Motion to Dismiss filed by Commonwealth Defendants Adolfson, Canino, Cox, Dombrowski, Lewis, Marsh and Taylor (collectively, the "Commonwealth Defendants") (Doc. No. 15) and the Response in Opposition filed by Plaintiff Ronald Wesley ("Plaintiff") (Doc. No. 20), it is **ORDERED** that the Commonwealth Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART** to the extent that all claims are dismissed against all the Commonwealth Defendants, except for Plaintiff's Eighth Amendment excessive force claim against Commonwealth Defendants Dombrowski and Adolfson.

In consideration of the Motion to Dismiss filed separately by Defendant Dennis Iaccarino ("Iaccarino") (Doc. No. 16), Plaintiff's Response in Opposition (Doc. No. 21) and Iaccarino's Reply thereto (Doc. NO. 22), it is **ORDERED** that Iaccarino's Motion to Dismiss is **GRANTED** in its entirety. All claims against Iaccarino are **DISMISSED**.

BY THE COURT:

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JAMES McGIRR KELLY, J.